How the White House can reform NEPA

Three ideas for the Council on Environmental Quality

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On day one, President Trump took bold executive action to streamline the National Environmental Policy Act (NEPA), revoking the 1977 Executive Order (EO) that gave regulatory authority to the Council on Environmental Quality (CEQ).[1] President Trump's new EO also directs CEQ to rescind existing NEPA regulations and issue new guidance that significantly accelerates permitting timelines. With these measures, the Trump administration has thrown out decades of NEPA regulations and related case law.[2]

CEQ's NEPA regulations and related court decisions have dramatically expanded NEPA's reach far beyond its statutory mandate.[3] These regulations imposed expansive definitions of key terms like "major federal action" and "significant effect," required agencies to analyze indirect and cumulative impacts, and created detailed procedural requirements that became magnets for litigation by project opponents such as bad-faith, extreme environmentalists.[4] By revoking CEQ's regulatory authority and directing the creation of streamlined guidance, the president's EO creates an opportunity for CEQ to interpret NEPA's requirements more narrowly, reducing the number of projects that trigger review, and limiting the scope of analysis required for projects that do trigger review.

If these regulatory changes are to survive court challenges, they must fit within NEPA's statutory requirements.[5] Fortunately, the Fiscal Responsibility Act (FRA) of 2023 updated the language of NEPA, providing a clear directive to simplify and streamline environmental review. The following recommendations are designed to significantly streamline NEPA while being careful to reasonably interpret the law.

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[1] Executive Office of the President, "*Executive Order 14154: Unleashing American Energy*," whitehouse.gov, January 20th 2025. Sec. 5: Unleashing Energy Dominance through Efficient Permitting.

[2] Ibid, sec. 5(b).

[3] NEPA has expanded due to a cycle of court decisions and increased regulation from CEQ. For an overview of several court cases that have expanded NEPA see this Department of Energy document. Court decisions have a chilling effect on federal agencies who often react by expanding their reviews to avoid future court losses. For an example of how CEQ has expanded NEPA see their 2024 Phase 2 regs.

[4] Minnesota Public Interest Research Group v. Butz, 498 F.2d 1314, 8th Cir. June 10th 1974. The court found that NEPA did not create two tests — one for whether an action is a "major federal action" and one for whether the action "significantly affects the environment" — meaning that "major federal action" simply refers to all federal actions.

[5] CEQ guidance must reflect reasonable interpretations of NEPA as amended by the FRA. Guidance that results in regulations being thrown out by federal courts will not help American energy deployment or have long term improvements to the NEPA process.

CEQ and implementing agencies can leverage reasonable interpretations of statutory NEPA and FRA language to achieve three significant goals:

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3.	Narrow the set of actions that require an Environmental Impact Statement (EIS).	8

We offer three reforms to pare NEPA back to fulfill its true statutory goals. First, to narrow the set of actions that trigger NEPA, CEQ should redefine "major federal action" to ensure that projects with low levels of federal involvement do not trigger NEPA. Second, to expand the set of actions that are eligible for a CatEx, CEQ should set a clear and broad standard for actions that "normally [do] not have a significant effect on the human environment." Third, to narrow the set of actions that require an EIS, CEQ should set a high standard for what constitutes a "reasonably foreseeable" significant effect. In each case, CEQ should be careful to reduce the litigation attack surface for agencies, advising agencies to consider issues like indirect effects under minimal scrutiny.

These recommendations embrace the principle that NEPA review should focus on analyzing large, disruptive infrastructure projects. Federal actions with no significant impact on the environment should be cleared as quickly as possible, or not reviewed at all. Limiting the definitions of "major federal action" and "significant," as well as expanding the use of categorical exclusions, will help reduce the procedural burden on actions with little environmental impact. Transparency and public input are good, and the public deserves to know the costs of proposed projects. But obstructionist litigation is not legitimate input. Complex analyses — like cumulative impacts — should not be subject to the same legal scrutiny that direct costs are.

GOAL 1

Narrow the set of actions that trigger NEPA

Redefine "major federal action"

The core absurdity of current NEPA implementation is that the law applies to virtually everything the government does. The reason for this is that NEPA is triggered by every "major federal action," which has been interpreted by CEQ to mean effectively any action where a federal agency exercises

discretion.[6] The effect of this interpretation cannot be overstated — the broad interpretation of "major federal action" is one of the primary reasons NEPA evolved from a five-page statute into the behemoth it is today.[7]

Determine "major federal action" with a two-part test

The current interpretation of "major federal action" is too expansive. The Fiscal Responsibility Act changed the statutory text of NEPA, providing a clear authorization to more tightly define the term and narrow the set of actions that undergo NEPA review.

Specifically, whereas the original text of NEPA did not define "major federal action," and CEQ later interpreted the term to mean "actions... which are **potentially** subject to federal control and responsibility," the Fiscal Responsibility Act defines "major federal action" as one "subject to **substantial** federal control and responsibility."[8] It also explicitly excludes actions where there is "no or minimal federal involvement," and actions where the agency "cannot control the outcome of the project."[9]

Therefore, to be a "major federal action," an agency must exercise meaningful discretion over that action. And the statutory text of NEPA creates a clear directive to define "major federal action" such that the exercise of significant discretion is required.

Given the language in the FRA, the determination that an action is a major federal action should rely on a two-part test. Part A determines whether an action represents federal control and responsibility. Part B determines whether that exercise of discretion is "substantial."

Test Part I: Does the agency exercise meaningful (non-ministerial) discretion?

An agency exercises meaningful discretion when it genuinely shapes a project, meaning it can do more than verify compliance with a standard checklist or threshold. For instance, an agency can exercise meaningful discretion by changing a project's location or scope, imposing custom

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[6] Scientists Institute for Public Information, Inc v. Atomic Energy Commission, (481 F.2d 1079, D.C. Cir. 1973). The court found that major federal actions include "project proposals, proposals for new legislation, regulations, policy statements, or expansion or revision of ongoing programs." See also: Minnesota Public Interest Research Group v. Butz.

[7] Following decisions such as *Scientists Institute for Public Information, Inc v. Atomic Energy Commission* and *Minnesota Public Interest Group v. Butz*, the 1978 CEQ regulations codified NEPA's expansive scope, defining major federal actions to include any projects or programs "entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies" (40 CFR § 1508.18). Rather than limit jurisdiction, the regulations created "categorical exclusions" as the mechanism to exempt low or zero-impact actions (40 CFR § 1508.4) from full review. This regulatory structure — comprehensive jurisdiction with categorical exclusions as the exemption mechanism — has defined NEPA implementation for the past 47 years.

[8] The original text of NEPA is available here. CEQ 1978 regs: 43 Fed. Reg. 55,978 (Nov. 29, 1978), see 1508.18 for the 1978 post-Minnesota Public Interest Research Group v. Butz (see note #4) definition of "major federal action" (page 27 of the pdf). For the changes see the Fiscal Responsibility Act of 2023, Sec. 321 The Builder Act.

[9] 42 U.S. Code § 4336e(10)(b).

conditions or mitigation strategies specific to the project's circumstances, or denying approval based on open-ended or qualitative criteria. If the agency can **significantly alter** the project's design in ways that go beyond confirming "yes/no" compliance with uniform regulations, then the agency is exercising meaningful discretion.[10]

By contrast, an agency has only a **ministerial** or **compliance-based** role if the agency must grant funding or issue a permit once certain uniform requirements are met — with no authority to require site-specific or discretionary changes. In these cases, the agency's review is limited to confirming that an applicant's emissions, discharges, or other parameters meet fixed regulatory thresholds. Once compliance is shown, the agency has no power to deny or significantly modify the proposed action.

Part I examples: Meaningful vs. minimal discretion

✔ **Yes (meaningful discretion): A Clean Water Act wetlands permit**
Under the Clean Water Act, agencies such as the Army Corps of Engineers can impose alternative siting, require robust mitigation measures, or even demand project redesign to minimize environmental harm.[11] When the agency significantly shapes the scope, location, or environmental outcomes of the project, it is exercising meaningful discretion. This authority goes well beyond simply confirming checklist items; the agency can deny or condition approval based on open-ended criteria, thereby triggering Part A of the test if the federal involvement is also "substantial."

✘ **No (minimal discretion): A mineral patent**
In contrast, a mineral patent must be granted if uniform criteria are met. The agency has no authority to deny the patent based on environmental concerns or shape project outcomes.[12] As a result, the agency's role is ministerial. Because it does not exert meaningful, non-ministerial discretion, NEPA review does not apply under Part A of the two-part test.

[10] This is further supported by Department of Transportation v. Public Citizen, 541 U.S. 752 (2004), in which the court ruled that when an agency has no statutory authority to prevent certain effects, and another entity is the legally relevant cause of those effects, analyzing them would not serve NEPA's purposes.

[11] Under *40 C.F.R. § 230.5*, the permitting authority is required to, "Examine practicable alternatives to the proposed discharge," including "not discharging into waters of the U.S. or discharging into an alternative aquatic site." The permitting authority is also required to, "Identify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge."

[12] The court in State of SD v. Andrus (1978) held that an Environmental Impact Statement was not required before issuing a mineral patent because the Secretary of Interior's role is nondiscretionary — once statutory requirements are met, the Secretary must issue the patent and has no authority to consider environmental factors or impose additional conditions.

✘ **No (ministerial funding): Formula-based pass-through grants**
Some funding programs, such as the Clean Water State Revolving Funds, provide formula-based grants with little or no opportunity for the agency to impose environmental conditions.[13] Once standard statutory or regulatory requirements are verified, the federal government must award the funds—there is no substantial power to shape the design, location, or operational details of the underlying projects. Although EPA has a general oversight role and can withhold funding if a project violates federal law, it lacks the open-ended authority to impose site-specific conditions or reconfigure the project. Thus, the agency's role is essentially limited to ensuring the applicant meets uniform criteria, and the federal involvement remains minimal under Part A.

If an agency **cannot** genuinely shape project outcomes beyond ensuring standard statutory/regulatory compliance, it fails **Part A** of the two part test, meaning it is not a major federal action and NEPA does not apply.[14]

Test Part II: Does the federal role rise to the level of substantial control?

Even with meaningful discretion, the federal government's involvement must be large enough to be "substantial." This is also reflected in 42 U.S.C. § 4336e(10)(B), which explicitly excludes actions with "no or minimal federal funding" or "no or minimal federal involvement."

To establish whether federal control and responsibility is substantial, an action must meet one of the following criteria:

1. Federal funding is at least 25% of the action's financing.
2. The agency provides unique or essential capabilities that are critical to the outcome of the action
   a. These include technical support, input in planning, staff involvement, facilitation of coordination with external parties, or use of agency equipment.
   b. If the scope of an action would remain largely the same without federal input, the role is "minimal" under § 4336e(10)(B)(i)–(iii); thus no substantial involvement.
3. The federal government uses eminent domain authority

[13] 33 U.S.C. §§ 1381–1387 sets up a *formula* for how much federal funding goes to each state. EPA does not pick local projects; it awards each state a "capitalization grant."

[14] While outside the scope of this section, we should note that courts have exempted EPA from NEPA review for actions under various environmental statutes through the "functional equivalence doctrine." This includes EPA actions under the Clean Air Act (Getty Oil Co. v. Ruckelshaus, 1972), the Ocean Dumping Act (Maryland v. Train, 1976), FIFRA (Merrell v. Thomas, 1986), RCRA (Alabamians for a Clean Environment v. EPA, 1989), and the Safe Drinking Water Act (Western Nebraska Resources Council v. EPA, 1991). Courts established this doctrine based on three criteria: the agency's organic statute must provide substantive and procedural standards ensuring environmental consideration, the process must allow for public participation, and the action must be undertaken by an agency primarily focused on environmental issues. Therefore, while Clean Air Act permits do allow agencies some non-ministerial discretion, these permits do not trigger NEPA.

25% is a reasonable metric, as it has been used in corporate ownership law as equivalent to "substantial control" over a company.[15] A secondary option could be to set the funding threshold at 10%, as it was the NEPA exclusion threshold set out in the Building Chips in America Act of 2023.[16]

Part II examples: Substantial versus minimal federal control

- ✔ **Yes (substantial federal control):** A highway project where the Federal Highway Administration provides 30% of funding and coordinates extensively with state DOT on design specifications and environmental mitigation measures. This action crosses the 25% funding threshold and therefore passes Part B.
- ✔ **Yes (substantial federal control):** A watershed restoration project where the federal agency only contributes 20% of funding **but** also provides essential technical modeling, coordinates with multiple jurisdictions, and determines key design parameters. The funding isn't sufficient but the federal agency exerts clear operational control via their role as lead coordinator and therefore passes Part B.
- ✘ **No (minimal federal control):** A local infrastructure project receiving 15% federal funding through a formula grant with no additional federal technical input or coordination role. Federal funding is less than 25%, the federal agency's involvement does rise to the level of critical operational control, and the project does not invoke the use of federal eminent domain. Therefore this action fails Part B and is not a major federal action.
- ✘ **No (minimal federal control):** A state-led conservation initiative where federal staff participate in advisory meetings, but don't provide essential technical support or significantly influence project outcomes. The federal agency's involvement remains minimal; the scope of the project would have remained largely the same had the federal officials not participated. Therefore this action fails Part B and is not a major federal action.

Only if **Part A** (meaningful discretion) and **Part B** (substantial funding/control) are both satisfied does the action qualify as a "major federal action." Otherwise, it falls under the statutory exclusions in **§ 4336e(10)(B) — NEPA does not apply at any tier**.

[15] The 25% threshold has established precedent in federal regulatory frameworks. For instance, the Financial Crimes Enforcement Network, a bureau within the Treasury Department, uses 25% ownership as a bright-line threshold for "substantial control" in corporate beneficial ownership reporting requirements. See 31 CFR § 1010.380(d) (2025).

[16] Building Chips in America Act of 2023, Pub. L. No. 118-105, 138 Stat. 1587.

GOAL 2

Expand the set of categorical exclusions

The Fiscal Responsibility Act of 2023 defines a categorical exclusion as "a category of actions that a federal agency has determined **normally** does not significantly affect the quality of the human environment."[17] The statutory text provides agencies considerable flexibility in interpreting what constitutes a "normal" absence of significant effects. This flexibility creates an opportunity to substantially expand the use of categorical exclusions while maintaining environmental safeguards.

Redefine "normally"

The term "normally" should be defined using a practical, bright-line test for significant effects. Agencies can reasonably classify actions as "normally" having no significant effect when a substantial majority of such actions have proven benign through actual implementation.

Specifically, an action category should qualify for a categorical exclusion when historical data demonstrates that a substantial majority (more than 70%) of comparable actions resulted in Findings of No Significant Impact (FONSI). This threshold replaces previous interpretations requiring near-certainty of no significant impacts, recognizing that if a substantial majority of similar actions have proven benign through actual implementation, the category can reasonably be classified as "normally" having no significant effect.[18]

The streamlining benefits would be enormous: ~99% of environmental assessments result in a FONSI.[19] This means that an overwhelming percentage of actions that currently trigger an environmental assessment could be covered under categorical exclusions under the new framework.

How to implement

Agencies should document factors that indicate future actions will maintain similar performance, including:

[17] 42 U.S.C. § 4336e(1)

[18] The current process for creating new categorical exclusions requires a federal agency to establish near certainty that the proposed CatEx does not have any substantial impacts on the environment. Despite FRA adding the qualifier "normally", current regulations drop the term in the implementing regulations at 40 CFR 1507.3(c)(8)(ii). Agencies are currently required to get approval from CEQ and generally opt to add qualifying language and mitigations to narrow the scope of the new CatExs to make their job easier in court.

[19] Per the Council on Environmental Quality, agencies prepare approximately 170 EISs and over 10,000 EAs each year. Given that EAs either result in a) a finding of no significant impact (FONSI) or b) an environmental impact statement (EIS), more than 98.3% of EAs must result in a FONSI. However, almost all EISs begin as EISs in the first place rather than going through the EA process first, suggesting that the true percentage of EAs that result in FONSIs is well over 99%.

A. Standard mitigation measures that routinely prevent significant impacts
B. Existing permit requirements that effectively control environmental effects
C. Common design features of best practices incorporated into such projects

These predictive factors help establish that the historical performance demonstrated by the 70% threshold will continue.

To support categorical exclusion determinations, agencies should:

1. Analyze historical NEPA reviews to establish the proportion of FONSIs
2. Evaluate how standard practices and requirements will maintain environmental performance
3. Provide professional assessment of typical project characteristics and their environmental implications
4. Maintain extraordinary circumstance review protocols for unusual situations

Redefine "significant effect"

This interpretation of "normally" works in tandem with a more precise definition of what constitutes a "significant effect." NEPA has never explicitly defined "significant effect," leaving room for a much more reasonable interpretation. Therefore, we recommend that an action should meet all three of the following criteria to be deemed significant:

1. **Substantial magnitude:** Exceeding minor or routine environmental changes
2. **High likelihood:** Based on probable, non-speculative outcomes, and proximately caused by federal action
3. **Inadequate existing mitigation:** Impacts that persist despite standard, widely used measures or compliance with existing regulatory thresholds

This standard would replace the CEQ's current "context and intensity" standard for "significant effect," which includes factors such as controversy and uncertainty, weighs cumulative impacts and indirect effects heavily, and has a lower threshold for what counts as significant.[20]

By tying "significance" to magnitude, likelihood, and lack of adequate mitigation, CEQ would shrink the set of "significant" impacts. This would also narrow the "cumulative impacts" concept: if those broader or longer-term effects are speculative, the agency can exclude them from "likely." And finally, if standard permitting under other environmental laws (such as the Clean Air Act or Clean Water Act) typically addresses any effect, CEQ could determine that that the effect no longer rises to significance because it will be mitigated to an acceptable level under those other laws.

This approach would maintain fidelity to statutory language while allowing for practical implementation, reducing unnecessary analysis for actions with demonstrated track records of

[20] 7 C.F.R. § 650.4 (2025).

minimal impact. It would also create clear standards that can withstand judicial review when properly documented.

How to implement

To establish magnitude thresholds, agencies should:

A. Identify quantitative thresholds where possible (e.g., acres of disturbance, emissions levels)
B. For non-quantifiable impacts, define clear categorical standards for what constitutes "substantial" versus "minor" changes
C. Document why these thresholds represent meaningful environmental distinctions

To establish likelihood, agencies should:

A. Develop clear standards for what constitutes "probable" versus "speculative" impacts
B. Require demonstration of direct causal links between federal action and environmental effects
C. Consider effects that involve multiple independent actors or events as generally more speculative
D. Prioritize analysis of direct, proximate impacts in determining significance
E. Effects may be considered more speculative and thus less likely to be "probable" when they:
    a. Depend on the combined effects of multiple separate actions
    b. Require assumptions about future actions by other parties
    c. Cannot be directly attributed to the federal action under review

To establish adequate and existing mitigation, agencies should:

A. Catalog standard permit conditions and widely-used mitigation measures by project type
B. Create presumptions that impacts are not significant when standard mitigation measures are applied
C. Establish protocols for determining when additional, project-specific mitigation might be needed

In each case, developing a robust administrative record will be important for justifying determinations and protecting against litigation.

GOAL 3

Narrow the set of actions requiring an EIS

The FRA requires an Environmental Impact Statement (EIS) only when a major federal action "has a reasonably foreseeable significant effect on the quality of the human environment."[21] The undefined

[21] Fiscal Responsibility Act of 2023, Sec. 321 The Builder Act. For current NEPA text see 42 U.S. Code § 4336(b)(1).

term “reasonably foreseeable” provides agencies flexibility to adopt a more focused interpretation that better aligns with NEPA's core purposes.

Redefine “reasonably foreseeable”

The term “reasonably foreseeable” should be interpreted to reflect practical agency decision-making rather than theoretical possibilities. An effect should be considered reasonably foreseeable when it:

A. Has a meaningful or substantial possibility of occurring under normal conditions, and;
B. Is proximate in causation, and;
C. The lead agency is legally responsible for the effect.

In other words, the effect must have a meaningful or substantial possibility of occurring under normal conditions, based on reliable data, recognized scientific methods, or established professional experience. It should not be enough that the effect is simply conceivable; it must be plausible and sufficiently supported by evidence or expert judgment.

The effect is proximate in causation if it directly arises from the proposed federal action or a short, clearly demonstrable chain of cause-and-effect.[22] This interpretation replaces previous approaches that often required agencies to analyze remote or speculative impacts. If effects depend on multiple intervening decisions, unpredictable external factors, or would require extensive new research to evaluate, they are less likely to meet the threshold of “reasonably foreseeable.”

How to implement

To establish reasonable foreseeability, agencies should:

A. Agencies shall rely on existing data, standard models, and past studies relevant to the project context. Additional research may be appropriate in rare circumstances in which it would substantially inform choices among alternatives and the cost and timeframe for said research is reasonable.
B. When data is incomplete or uncertain, agencies may address minor or remote impacts through Environmental Assessments, and may focus modeling on scenarios supported by credible evidence.
C. Agencies may prioritize direct relationships between federal action and environmental effects. Effects may be considered more speculative when they depend on numerous intervening decisions, require assumptions about third-party actions, involve extended chains of causation, and require extensive new research to analyze.

[22] In its 2020 Final Rule, CEQ proposed to simplify the definition of “effects” by replacing references to “direct, indirect, and cumulative effects” with the following definition: “Effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives; a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.” CEQ further noted that, “this close causal relationship is analogous to proximate cause in tort law.”

D. The agency need not engage in extended speculation or worst-case scenario modeling absent a credible, data-driven basis for concluding an effect is likely. Residual unknowns do not, by themselves, trigger the requirement for a full EIS.

Additional guidance

Use alternatives analysis to protect against litigation

CEQ should provide guidance on a "belt-and-suspenders" approach to environmental review documentation. When agencies make determinations that certain impacts need not be analyzed, they should consider including brief alternative analyses that demonstrate the ultimate decision would be the same even if those impacts were considered.

For example, if an agency determines that upstream greenhouse gas emissions are not “reasonably foreseeable” impacts of a natural gas pipeline, it might still include a short analysis showing that even if those emissions were considered using standard methodologies (like the social cost of carbon), the project's benefits would outweigh its costs. This approach preserves the agency's primary legal position while creating a fallback defense, reduces litigation risk by demonstrating that the ultimate outcome is justified under multiple analytical frameworks, and creates a more complete record that can help survive judicial review.

This strategy recognizes that while agencies should advocate for streamlined interpretations of NEPA requirements, they must also be pragmatic about litigation risk. A brief alternative analysis can serve as an insurance policy against judicial remand while maintaining the agency's preferred legal interpretation.

Drive agency action on categorical exclusions

CEQ must take an aggressive stance in pushing agencies to expand their use of categorical exclusions. The current passive approach, in which agencies independently decide when to update their categorical exclusions, has led to stagnation. Instead, CEQ should establish an annual reporting system that requires agencies to document their FONSIs, analyze patterns that could support new categorical exclusions, and explain their progress in developing new exclusions. Agencies shall also be asked to justify why similar actions that consistently receive FONSIs haven't been converted to categorical exclusions.

CEQ should further push agencies to establish categorical exclusions that can be easily and effectively adopted by other federal agencies under the authority created in the FRA 42 U.S. Code § 4336c. Agencies shall consult with other agencies that may benefit from the new exclusion and seek to ensure that the language of the exclusion would work to the benefit of the entire government.

CEQ should set hard deadlines for agencies to review their last five years of FONSIs and propose new categorical exclusions based on clear patterns. Agencies that fail to aggressively expand their categorical exclusions should face increased oversight, including required agency head briefings to CEQ and OMB, detailed justification requirements for maintaining environmental assessments on actions with consistent FONSIs, and inclusion of CatEx modernization progress in their annual Government Performance and Results Act (GPRA) performance reports.

Ambitious baseline categorical exclusions

CEQ should establish a minimum floor of categorical exclusions that all agencies must adopt:

- All actions disturbing less than five acres
- Any expansion less than 20% of existing facility footprint, conditional on the facility a) having a footprint of five acres or less and b) having not already received a categorical exclusion for a footprint expansion
- Certain developments on previously disturbed lands, such as office to residential conversions, redevelopment for the same or similar commercial use, or actions that convert previous commercial development to a less environmentally disruptive use

Agencies should be given six months to either adopt these categorical exclusions or provide detailed, data-driven justification for why they cannot. The burden of proof should be on agencies to explain why they can't adopt these baseline exclusions, not on CEQ to justify why they should.

Streamlining decision-making

CEQ should refine the process for designating cooperating agencies under 40 CFR § 1501.8. That provision states that an agency may serve as a cooperating agency if it has "jurisdiction by law" over some aspect of the proposed action or if it has "special expertise" with respect to an environmental issue. In practice, these categories can become so broad that multiple agencies claim a formal decision-making role, bogging down the review.

To address this, CEQ should clarify that the lead agency should request cooperating status **only** when another agency's statutory authority or unique technical expertise is **truly indispensable** for analyzing potential effects or shaping project outcomes. Agencies that lack direct approval authority or do not possess critical expertise could still provide meaningful input through the normal interagency consultation or public engagement processes, but would not be formal cooperating agencies. Concentrating final decision-making authority in a single lead agency reduces duplication and overlapping reviews, helping to streamline NEPA.

CEQ should also direct agencies to minimize the complexity of internal approvals of NEPA documents. Agencies should work with CEQ to maintain a lean approval structure for internal review and sign off to reduce bureaucratic friction. For example, the Bureau of Land Management's below-average EIS preparation times have been attributed to their lean internal approval structure.

Issues for further discussion

While the reforms outlined above address the core drivers of NEPA complexity and delay, other areas warrant further consideration.

Programmatic environmental documents

The FRA codifies agencies' ability to rely on programmatic environmental documents for subsequent related actions, creating an opportunity for significant streamlining. With programmatic reviews, agencies can rely on programmatic analyses without additional review for five years, unless there are “substantial new circumstances or information.” Even after five years, agencies can continue relying on programmatic analyses as long as they reevaluate the underlying assumptions.

CEQ could leverage this authority by requiring agencies to identify categories of similar actions that could benefit from programmatic review, setting clear standards for what constitutes “substantial new circumstances,” and establishing procedures for validating underlying assumptions after the five-year mark.

Reasonable range of alternatives

The FRA's changes to NEPA's alternatives analysis requirements provide a foundation for narrowing the scope of alternatives analysis. NEPA now requires analysis of alternatives that are both “technically and economically feasible” and “meet the purpose and need of the proposal.”

Agencies could use this new language to exclude alternatives that are prohibitively expensive, require a tight nexus between alternatives and project objectives, and more heavily weigh the environmental costs of inaction.

Conclusion

These reforms would restore NEPA to its original purpose as a targeted environmental review process for truly significant federal actions. By narrowing the definition of “major federal action,” expanding categorical exclusions, and focusing EIS requirements on reasonably foreseeable effects, agencies can dramatically reduce the number of unnecessary reviews. This streamlined approach would allow federal agencies to focus their analytical resources on projects with genuine environmental implications, rather than getting bogged down in procedural requirements for minor actions. Most importantly, these changes would accelerate the deployment of critical infrastructure projects while remaining faithful to NEPA's core mandate of informed decision-making.